

**Aurora Fast Freight, Inc. and Teamsters Local 673,
International Brotherhood of Teamsters, AFL-
CIO, Petitioner.** Case 13-RC-19417

July 24, 1997

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

On August 29, 1996, the Regional Director for Region 13 issued a Decision and Direction of Election in which she found that a unit limited to "general office" clericals at the Employer's freight terminal in Aurora, Illinois, is appropriate. In accord with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer and the Petitioner filed timely requests for review. The Employer also filed an opposition to the Petitioner's request for review. By Order dated September 26, 1996, the Board granted both requests for review.¹

Having carefully examined the entire record, including the Employer's brief on review, we find, contrary to the Regional Director, that a unit limited to certain office clericals in the general office is not appropriate, and that the appropriate unit must include clericals in both the general office and the dispatch office.

The facility at issue is one of the Employer's two freight terminals. The Petitioner originally sought all hourly paid clerical employees, excluding all salaried employees. The Employer contended that the only appropriate unit must include both hourly paid and salaried general office and dispatch office clerical employees.

The Regional Director first concluded that the petitioned-for unit was inappropriate. She found that the unit requested in the petition grouped together employees without a sufficient community of interest, and was based, at least in part, along gender lines. The Regional Director further concluded, however, that a unit limited to office clericals in the general office, and excluding clericals in the dispatch office, was appropriate. The Regional Director did not find that the dispatch office clericals were plant clericals. Rather, she found that the employees performing clerical duties in the general office shared a community of interest, and those performing such duties in the dispatch office, as well as the clerical employee who handles claims about shipments that are over, short, and damaged (John Sperling), had separate supervision, different pay, little interaction, and different tasks, such that they lacked a community of interest with the clericals in the general office. Because she excluded Joe Hartmann on other grounds, the Regional Director did not

decide whether he should be excluded from the unit based on his familial relationship to the Employer's principals.

The Employer contends that the duties of certain dispatch office employees are nearly identical to the duties of the employees in the general office. The Employer contends that a unit including all employees in both offices is the only appropriate unit.

The Petitioner contends that the Regional Director improperly excluded dispatch/data entry employee Mary Wisdom. The Employer argues that if the Board includes Mary Wisdom, to which it is agreeable, it should also include similarly situated employee Ken Butzen.

Facts

The Employer transports freight. There are 16 nonsupervisory/nonmanagerial employees who work in the general and dispatch offices at its Aurora terminal.² The offices are adjacent, separated by an interior door. The employees perform administrative functions related to the transportation of freight, such as data entry, billing, filing, and customer service. The Employer has both day and night shifts in both offices.

Terry Hartmann is the Employer's president and majority shareholder. Terry's brother, Ken Hartmann, is the terminal manager, the vice president of operations, the primary dispatcher, and a shareholder. Brad Hartmann is vice president of sales. Terry's son, Bruce Hartmann, is vice president of finance. Bruce Hartmann works in the general office and serves as daytime office manager. Bob Roske is the evening manager and supervises the night-shift employees. Harrison Morris is the night operations manager.

The 16 employees work in 1 of 5 job classifications: data entry, customer service/data entry, file clerk/data entry, rate clerk/data entry, or dispatch/data entry. All employees in both offices have data entry duties. Data entry work is performed during both the day and night shifts.

The six employees classified as data entry include two employees, Dave Coulson and Joe Hartmann, who work at night in the dispatch office and who were excluded by the Regional Director. In addition to data entry, Coulson routes the freight bills for the next day. Joe Hartmann is Ken's son and Terry's nephew. He does the same work as Coulson but additionally prepares the manifests and matches them with the freight bills.

The five customer service/data entry employees are Denise Dennis, Michelle Edwards, Kathy Weitan, John Sperling, and Arlene Holt. These employees work dur-

¹ In granting review, the Board treated the Employer's opposition as a motion for extension of time to file a request for review, and granted the motion.

² To the extent that the Petitioner's request for review can be read to suggest that Ken Butzen or other disputed male office employees are statutory supervisors, we find that the evidence does not support such findings.

ing the day, receiving calls from customers and answering their questions based on information in the computer. All of them additionally have some data entry responsibilities.

Sperling is the employee who primarily handles customer claims about shipments that are over, short, or damaged. Dennis and Weitan back him up. Sperling has no authority to adjust bills. His duties are limited to customer relations, research, and preparation of paperwork for Bruce Hartmann, who is responsible for paying the claims. Sperling is the only employee in this classification who is salaried. He works in the general office, but reports to Ken Hartmann, the primary dispatcher. The other general office employees report to Bruce Hartmann.

Dennis is the primary person who bills shipments. Sperling and Weitan back her up. Edwards mails out and matches bills of lading with freight bills, and handles all billing for one of the major accounts. Holt corrects mail sent back because of incorrect addresses. Weitan and Holt perform corrections on the Employer's bills.

There is one employee, Karen Boland, classified as a file clerk/data entry. Her primary function is to put computer generated statements into envelopes and mail them to customers. She works on the day shift. She works on available computer terminals, including, on occasion, in the dispatch office.

Ken Vankell is the rate clerk/data entry employee. He adjusts rate data in the computer system and informs customers of pricing. His determination of rates is ministerial and based on information he receives from the Tariff Bureau and the Employer's sales personnel. He is salaried and works days in the general office.

Ken Butzen and Mary Wisdom are classified as dispatch/data entry clerks. Butzen dispatches about 20 percent of the deliveries, usually after Ken Hartmann has left for the day. Wisdom's primary job is to handle the pickups, but she does dispatch drivers when Hartmann and Butzen are busy. While Butzen is more responsible for communicating with the drivers, Wisdom also performs that function 20 percent of her time on orders from Ken Hartmann. Butzen enters appointments to deliver freight, and Wisdom enters all the delivery receipts from the previous day.

The dispatching functions performed by Butzen and Wisdom are ministerial. Each driver has a certain area, and most make the same pickups every day. Both report to Ken Hartmann and work in the dispatch office. Butzen is salaried, and Wisdom is hourly paid.

Analysis

The Board's general policy is that a segment of an employer's office clerical employees is not an appropriate unit. *Bank of America*, 174 NLRB 101 (1969).

Although we agree with the Regional Director that the unit sought by the Petitioner is inappropriate, we do not agree with the Regional Director that a unit limited to employees in the general office is appropriate. To the contrary, we find that, in the particular circumstances of this case, the only appropriate unit includes employees in both the general and dispatch offices.

First, it is apparent that all employees perform clerical functions. No special skills or education are required for any of these clerical positions. The two offices are adjacent, and the functions performed in each office are interdependent with those in the other. As acknowledged by the Regional Director, all the employees have virtually the same benefits. Data entry is performed by all employees on both shifts. Even the employees whose primary function is customer relations also perform data entry. Indeed, as detailed above, the record is replete with examples of how employees—including those excluded by the Regional Director—back up each other's functions.

Pay rates are comparable between the two offices and the two shifts. The salaried employees generally work longer hours than the hourly paid employees. The hourly paid employees receive overtime pay when they work late. However, difference in method of pay—salaried or hourly—is not, standing alone, a sufficient basis for excluding employees, especially when the overall rates of pay are comparable.³ Moreover, we note the Regional Director included one salaried employee (Vankell), while excluding another (Sperling) based, in part, on his salaried status. Such distinctions are unwarranted here.

We further note that the Petitioner still seeks to include dispatch office employee Wisdom. The Employer argues, and we agree, that there is no meaningful distinction between Wisdom's and Butzen's status, and that if Wisdom is included in the unit, so, too, should be Butzen. Furthermore, there is some overlapping supervision, as dispatch Office Manager Ken Hartmann supervises general office employee Sperling. We find the separate supervision and minuscule differences in wages and benefits are not sufficient to sustain a finding of a separate community of interest warranting a unit limited to general office employees. Accordingly, we find that the appropriate unit must include both salaried and hourly paid employees in the general and dispatch offices.

The Regional Director excluded Joe Hartmann on grounds that as a dispatch office data clerk, he lacks a community of interest with the general office employees. We have reversed the Regional Director's finding in this regard. The Regional Director found it unnecessary to reach the issue of Joe's familial relationship with the Employer's owners. This issue, how-

³ *Power, Inc. v. NLRB*, 40 F.3d 409, 421 (D.C. Cir. 1994).

ever, was fully litigated at the hearing, and both parties briefed it to the Regional Director. The evidence shows that Joe lives at home with his father, Ken Hartmann, the Employer's vice president of operations and a 40-percent shareholder. His uncle, Terry Hartmann, is the Employer's president and majority shareholder. In *NLRB v. Action Automotive*, 469 U.S. 490 (1985), the Supreme Court, approving the Board's practice, held that relatives of minority shareholders in a closely held corporation may be excluded by the Board from bargaining units without a showing of special status. The Court held that the Board was particularly justi-

fied in so finding when the individual lives in the same household as the shareholder. Thus, we find that, even though there was no showing of special status or treatment by the Employer, Joe Hartmann's close relationship with the Employer's related shareholders, who are actively involved in managing the Company and the small number of employees, warrants his exclusion from the unit.

Accordingly, we reverse the Regional Director's decision and find that the only appropriate unit includes employees in both the general and dispatch offices.